

FILED

JUL 11 2008

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# Yellowstone County

JUSTICE COURT  
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Judge Larry D. Herman  
P.O. Box 35032  
Billings, MT 59107-5032

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July 10, 2008

JUL 11 2008

Montana Supreme Court  
Box 203003  
Helena, MT 59620-3003

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Re: Proposed 2008 Montana Code of Judicial Conduct

Dear Honorable Justices

Rule 3.10 of the Proposed 2008 Montana Code of Judicial Conduct concerning the practice of law by judges is suitable in application to district court judges with livable wages and benefits, but not in application to judges of courts of limited jurisdiction.

Under §3-10-102 a justice court is always open for the transaction of business, except for legal holidays. In effect a justice court judge is a full time judge. A county may establish office hours open to the public commensurate with the salary provides under §3-10-208. A justice of the peace is not elected to a part time position and is regularly contacted by law enforcement for search warrants, writs and other matters at hours not open to the public.

An elected justice of the peace is still a full time judge albeit not paid a salary commensurate to a district court judge's salary or other full time positions. The same can be said for city and municipal judges.

As a practicing attorney I would not have run for a judgeship in a city or justice court if I had been prohibited from practicing law. As a city judge for 15 years I was not paid a salary that would be considered commensurate with a full time position. I was considered a full time judge by the state for retirement and other purposes. I was available at any hour of the day and regularly called upon for the issuance of search warrants

and determination of probable cause matters, often at 2 A.M. or 3 AM.

I would ask that Rule 3.10(B) be amended to read as follows:

"(B) A judge of a court of limited jurisdiction, a part-time judge or judge pro tempore may practice law."

It has long been established in Montana a judge of a court of limited jurisdiction could practice law provided he did not practice before the judge's own court. Nor was a partner of a judge of a court of limited jurisdiction to practice in the judge's court. This was codified in §3-1-603(2) and §3-1-604 as restrictions on municipal court judges. I would recommend adding two subsections to Rule 3.10 as follows:

"(D) A judge of a court of limited jurisdiction may not practice law before the judge's own court.

(E) A partner of a judge of a court of limited jurisdiction or pro tempore may practice in any court of this state, except the court of the partner who is a judge of a limited jurisdiction court."

If an exception is not made for judges of courts of limited jurisdiction the judiciary will suffer. No practicing attorney will consider any judgeship in a court of limited jurisdiction. A court of limited jurisdiction judge is the first contact most citizens have with the judicial system. An attorney serving as a judge of a court of limited jurisdiction reaps experience in becoming a district court judge or indeed to aspire to the Supreme Court.

I plea you will consider my comments and recommendations and allow judges of courts of limited jurisdiction to practice law in any court except their own.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Herman", with a stylized flourish at the end.

Judge Larry D. Herman